IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2562 OF 2004
IN
APPEAL NO. 858 OF 2003
IN
SUMMARY SUIT NO. 3459 OF 2001

Ramesh Bhansali] .. Appellant
(Ori.Plaintiff)

Versus

M/s. Shree Sant Damaji Sahakari Sakhar Karkhana Limited.] .. Respondent
(Ori.Defendant)

Mr. Santosh Shetty i/b M/s. M.P. Vashi & Associates for the applicant.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. On 8th July, 2003 the Prothonotary & Senior Master ordered that if the objections in the Memo of Appeal are not removed before 5th August, 2003, the Appeal shall stand rejected under Rule 986. The office objections were not removed by that time. Thereafter, praecipe was taken out by the appellant on 7th August, 2003 before the Prothonotary & Senior Master for extension of time for removal of office objections. The extension was sought on the ground that the Exhibits

were being typed and that would require some time. On the said praecipe the Prothonotary & Senior Master extended time for removal of office objections for a period of four weeks. Even within the extended time, the office objections were not removed, resulting into rejection of the Appeal.

2. By this Notice of Motion taken out after more than a year, the appellant prays for condonation of delay in making the application belatedly for restoration of the Appeal.

3. In paragraph 6 and 7, the explanation for delay reads thus:

> "6. I say that the concerned clerk was sick and thereafter the same was not followed by him as a result of which the objections were not removed, which resulted in rejection of appeal and no further extension for removing the office object was sought for the same. I was assured by the concerned clerk that he would do the needful and there was no need for me to come to the court for that purpose. He further assured me that I would be informed as and when the matter would be placed on board. Believing his words, I did not come to the court, but I was regularly in touch with him on telephone, when I was being assured that he was doing the needful. But when I was not contacted by him for a long time, it was then, that I approached my advocate on 30/6/2004 to inquire about the matter. It was then that I came to know that the concerned clerk who was to remove the office objections had left the services.

> 7. Thereafter, inquiry was made in the department and it was learnt only on 2/7/2004 that the appeal was rejected due to non-removal of office objections. Accordingly, the application was made before the Ld. Prothonotary & Senior Master on 7/7/2004 to restore the appeal. But, the Ld. Prothonotary & Senior Master refused to restore the appeal stating that she had no powers to do so as there was considerable delay in making the application and I should approach the Hon'ble Bench for that purpose. There is delay of 380 days in making this application. The same be condoned as the same was rejected without any fault on my part. In the interest of justice, I therefore pray that the delay in making this application be condoned and the appeal be restored to file."

4. Upon careful perusal of the aforesaid paragraphs, it may be immediately noticed that the appellant has not given the name of the Clerk nor the period of his sickness has been mentioned. For want of naming the clerk, it is difficult to accept the case set up by the appellant that he was assured by the said Clerk that he would to the needful and there was no need for him to come to the Court. Though in the Affidavit it is stated that the deponent was regularly in touch with the concerned Clerk on telephone, even the telephone number is not disclosed. It appears that for the first time he approached his Advocate on 30th June, 2004 to inquire into the matter. That means for nine months the appellant even did not contact his Advocate.

To cover up his negligence, it appears to us, that the appellant has roped in the sickness of the Clerk. There is no Affidavit by the Clerk. We find the Affidavit extremely vague and, therefore, not acceptable. Long delay of 380 days is not explained sufficiently. The explanation does not constitute sufficient cause.

. We, accordingly, dismiss the Notice of Motion.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]